

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JON HOLCOMBE ET AL.,

Plaintiffs

RUBEN D. RIOS, JR.,

Plaintiff-Intervenor

V.

THE UNITED STATES,

Defendant

[illegible]

CIVIL ACTION NO. 5:18-CV-555-XR

PLAINTIFF RUBEN D. RIOS, JR.'S TRIAL BRIEF ON FEDERAL RULE OF EVIDENCE 803(19)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Ruben D. Rios, Jr. (“Rios”) presents this Trial Brief on Federal Rule of Evidence 803(19) and respectfully shows the Court the following:

Federal Rule of Evidence 803(19) allows hearsay statements to be admitted, regardless if the declarant testifies about the statement, if the statement concerns a “reputation among a person’s family by blood, adoption, or marriage...concerning the person’s marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.” *See* Fed. R. Evid. 803(19)(emphasis added); Fed. R. Evid 801–802.

Under Federal Rule of Evidence 803(19), a hearsay statement regarding the marriage of a person within the declarant's family is much more likely to be reliable and admissible than miscellaneous facts about the declarant's family history. *See Porter v. Quarantillo*, 722 F.3d 94,

99 (2d Cir. 2013) (quoting 5 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence § 803.21[1], p. 803–140 (J. McLaughlin ed., 2013) (“[A] false reputation as to birth, death, or marriage is not likely to arise at any time. However, there is a greater possibility of inaccuracy concerning other aspects of family history, such as an ancestor's travels.”)).

Here, the hearsay statements at issue involve a Facebook message sent by Plaintiff Lisa McNulty, **Tara McNulty’s mother and Rios’ mother-in-law**, to Rios. PEX 12061 (attached herein).¹ More specifically, Ms. McNulty sent Rios a Facebook message after he visited Tara’s gravesite stating that Tara “never gave up on you” and “didn’t believe the kids.” *Id.* This statement directly relates to the reputation within the McNulty family that Tara in fact intended to remain married to Rios despite the horrendous accusations lodged against him. *See* PEX 12062 (Rios charges and acquittal). Stated differently, PEX 12061 contains reputation statements that directly relate to Tara McNulty’s marriage to Rios at the time of the tragic Sutherland Springs shooting. Furthermore, at trial, Lisa McNulty provided clear testimony that she maintained a very close relationship with Tara while Rios was in pre-trial confinement.² Accordingly, Lisa McNulty’s June 25, 2019 Facebook message to Rios is from a reliable source and is an admissible statement concerning the reputation in the McNulty family about Tara’s marriage to Rios.³

¹*See* Transcript of Bench Trial Proceedings Before the Hon. Judge Xavier Rodriguez, United States District Judge, Oct. 5, 2021, at p. 414 (the Court taking the admissibility of PEX 12061 under advisement); Fed. R. Evid. 803(19) (the declarant may be related to the person about whom the reputation statement is made by blood or marriage).

²*See, e.g. id.* at p. 316 (Ms. McNulty testifying that Tara lived with her for three years after she moved back to Texas from Louisiana); 318 (Ms. McNulty testifying that Tara was somebody [she] could always rely on to help and support [her] whenever [she] needed it.”);

³Plaintiff Rios strongly urges the Court to also consider that the reliability of the statements within PEX 12061 concerning Tara’s belief of Rios’ innocence are supported by Rios’ acquittal. *See* PEX 12062-000007 (announcement of the “not-guilty” verdict in Louisiana court).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that under Federal Rule of Civil Procedure 5, the foregoing Trial Brief was sent to counsel of record for all Plaintiffs' and Defendant, the United States of America, in this matter on October 6, 2021 via the Court's electronic filing (CM/ECF) system.

BY: **/s/ Craig W. Carlson**

<  Lisa McNulty  



I see you visit
Thank you

JUN 25, 2019, 9:14 PM

I really miss y'all. I miss Tara
so much.

You can now message and call each other and see info
like Active Status and when you've read messages.

JUN 25, 2019, 9:29 PM



I'm sure
She never gave up on you
She didn't believe the kids

10/04/2021

PEX 12061



Aa



PEX 12061-00001